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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,978

07/11/2003

George S. Pantan JR.

PAN-010

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09/22/2006

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EXAMINER

CONLEY, FREDRICK C

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,978

Applicant(s)

PANTON, GEORGE S.

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/22/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/22/06 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,715,170 to Richmond in view of U.S. Pat. No. 5,473,784 to Nixon et al., and further in view of U.S. Pat. No. 5,950,627 to Bologovsky et al.

Claim 16, Richmond discloses a method of making a spine board, comprising: injecting foam into the interior of a unitary board structure through an ingress opening (91a,91b) while providing an inherent egress for air from said interior, until said foam fills said interior completely (col. 3-4 lines 59-68 and 1-2). Richmond fails to disclose forming a pair of mating board portions together defining said board and thermo-welding one of said pair to another of said pair to define a hollow unitary board structure.

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Although not injecting the interior of a board structure with foam, Nixon does disclose forming a pair of mating board portions together and bonding one of said pair to another of said pair to define a hollow unitary board structure (col. 1-2 lines 64-68 & 1). It would have been obvious to form a pair of mating board portions and bond together as taught by Nixon in order to provide a body board with an outer plastic shell which prevents the absorption of blood. With regards to the Examiner's Official notice that it is well known to employ thermo-welding as a bonding means the Applicant did not adequately traverse the response filed on 7/11/05 therefore the notice under Official Notice was taken as admitted prior art, and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ thermo-welding in order to bond the mating board portions of Richmond, as modified, together. Richmond also fails to disclose sealing an ingress opening. Bologovsky discloses a sealing an ingress opening of a spine board (col.8 lines 4-13). It would have been obvious for one having ordinary skill in the art at the time of the invention to seal an ingress opening as taught by Bologovsky in the spine board of Richmond in order to reduce the likelihood that the interior of the board will become a source of infection.

Claim 17, Richmond, as modified, fails to disclose the step of forming including vacuum forming a thermo-plastic material. Nixon discloses the step of forming the board portion is a step of vacuum forming a thermoplastic material (col. 8 lines 14-16)(Nixon). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ the step of vacuum forming a thermoplastic material as taught by Nixon with the board of Richmond in order to form a hard outer plastic shell.

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Claim 18, wherein, in the step of injecting foam, said foam inherently adheres to the interior of said unitary board structure, said unitary board structure being corrugated along runners 60 to accept the foam, thereby avoiding delaminating of the structure itself. Corrugated is defined as having alternating grooves therefore the grooves formed by runners are interpreted as corrugating the unitary board structure of Richmond.

Claim 19, wherein Richmond, as modified, discloses removing the board structure from the compression press (col. 8 lines 22-23). Richmond fails to disclose positioning said unitary board structure in a secondary mold prior to injecting said foam. Bologovsky discloses positioning a board structure in a secondary mold prior to injecting said foam (col. 7-8 lines 65 & 1-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to place the unitary board structure of Richmond in a secondary mold as taught by Bologovsky in order to prevent the spine board from distorting under the injection and expansion pressures of the urethane foam.

Claim 20, wherein said foam is urethane foam (col. 3 line 68)(Richmond).

Response to Arguments

Applicant's arguments filed 7/16/05 have been fully considered but they are not persuasive.

With regards to the Examiner's Official notice that it is well known to employ thermo-welding as a bonding means the Applicant did not adequately traverse the response filed on 7/11/05 therefore the notice under Official Notice was taken as admitted prior art. However, U.S. Pat. No. 6,061,853 to Laaksonen et al. discloses a stretcher that employs heat welding (col. 2 lines 24-25).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Richmond discloses a method of making a stretcher comprising injecting foam into the interior of a unitary board structure through an ingress opening (91a,91b) until foam fills said interior (col. 3-4 lines 59-68 and 1-2). Nixon discloses forming a pair of mating board portions from an outer plastic shell and bonding them together (col. 1-2 lines 64-68). The combination of references as a whole would provide a stretcher formed from a pair of mating board portions with foam injected within the interior. Furthermore, it is unclear how merely forming a unitary structure such as the stretcher of Richmond from a pair of

separable parts as taught by Nixon is considered a novel feature. The Applicant relies on broad language that fails to clearly distinguish the present invention over the prior art of record.

As previously stated, the Applicant's declaration under 37 C.F.R. 1.131 does not sufficiently demonstrate completion of the Applicant's invention prior to provisional application 60/380,715 filed May 15, 2002. A general allegation that the Applicant's invention was completed prior to the provisional application filed May 15, 2002 is not sufficient. Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. In order to demonstrate completion of the invention prior to the provisional application filed on May 15, 2002 the Applicant must provide supporting statements by witnesses, where verbal disclosures are the evidence relied upon. Where interference testimony is used, the applicant must point out which parts of the testimony are being relied on. The declaration must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33.


With regards to the provisional application to Richmond, the Examiner relies on Richmond to demonstrate the Applicant's claim of injecting foam into the interior of a unitary board structure through an ingress opening, providing egress for air from said interior until said foam fills said interior completely, forming a pair of mating board portions, and thermo-welding one of said pair to another and not to provide pathogen resistance as alleged by the Applicant.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FC 



**PATRICIA ENGLE
SUPERVISORY PATENT EXAMINER
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